IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

JUDGMENT

State of Rajasthan & anr. Vs. Mahesh Singh & anr.

S.B. CIVIL MISC. APPEAL NO.256/1994.

Against the award dated 14.01.1994 made by the Motor Accidents Claims Tribunal, Bikaner in Claim Case No.5/1988

Date of Judgment :: 07.08.2006.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. B.L. Bhati, Additional Govt. Advocate for the appellant.
Mr.K.R.Saharan for the respondent No.1.

...

BY THE COURT:

On 04.08.2006 learned Additional Government Advocate was heard for the appellants; none appeared for the respondents and this appeal was posted for dictation of judgment today. However, learned counsel for the claimant-respondent No.1 has appeared and has requested for making submissions. Having regard to the circumstances of the case, learned counsel for the respondent No.1 has also been heard.

This appeal has been preferred against the award dated 14.01.1994 made by the Motor Accidents Claims Tribunal, Bikaner in Claim Case No.5/1988 whereby the

Tribunal has awarded compensation in the sum of Rs.27,000/- to the minor claimant Mahesh Singh for the injuries sustained in a vehicular accident involving a jeep belonging to the appellants.

The claim application was submitted on behalf of Mahesh Singh, 12 years in age, by his natural guardian father with the submissions that on 01.08.1987 Mahesh Singh and Babu Lal were coming from market walking on the side of the road near Loonkaransar Circle at Bikaner-Ganganagar road; a jeep bearing registration No. RSF 5430 driven rashly and negligently came from behind and hit Mahesh Singh who was thrown off the feet and the jeep sped away; the injured claimant fell unconscious, was taken care of by his brother Man Singh and was removed to 'Z' Ward of P.B.M. Hospital for treatment; the incident was reported to Police at 4:00 p.m.; and after investigation challan was filed against the jeep driver, non-applicant No1 Malkit Singh for offences under Sections 279 and 338 IPC. It was further averred that due to the accident, right femur bone of the claimant was fractured; he remained hospitalised from 01.08.1987 to 31.08.1987 and his leg was kept in bandage up to 14.10.1987; he was required to be operated upon twice and till 31.10.1987 had to undergo physiotherapy; and that the claimant was still limping and was unable to participate in the extra curricular activities of dancing

and sports and missed half yearly examination and monthly tests causing serious set back in his studies. An amount of Rs.32,000/- was claimed as compensation comprising of Rs.10,000/- for permanent disability, Rs.10,000/- for physical and mental sufferings, Rs.10,000/- for future loss, Rs.1,000/- for treatment expenditure and Rs.1,000/- for transportation.

The non-applicant No.1, driver of the offending vehicle while denying the claim averments submitted that taking the staff with him, he was driving the jeep with all care and caution going towards State Bank of Bikaner & Jaipur, Public Park Branch; on the main road, two boys who were learning cycling suddenly came under the jeep; that the non-applicant on humanitarian grounds removed the boy to the hospital and informed his relatives and the boys also admitted their mistake. In a separate reply by the owner of the vehicle, the same averments were reiterated that the jeep was being driven with all care and caution and the claimant while in the process of learning, hit against the jeep and was, therefore, not entitled to any compensation. The quantum of compensation claimed was also put to contention and an objection was raised that the claim application was barred by limitation.

On the pleadings of the parties, the following issues were framed by the Tribunal for determination of the

questions involved in the case:-

> "1. आया दिनांक 1-8-87 को विपक्षी सं. 1 मलकीतसिंह ने विपक्षी की ओर से सड़क आम लूणकरणसर चौराहा, बीकानेर - श्री गंगानगर मार्ग पर वाहन सं. जीप आर.एस.एफ. 5430 को तेजी व लापरवाही से चलाते हुए प्रार्थी के टक्कर मारकर दुघर्टना कारित की जिससे प्रार्थी घायल हुआ और उसकी टांग में लगी चोट से स्थाई आंशिक असमर्थता कारित हुई ?
>
> 2. आया प्रार्थी क्लेम के चरण सं. 11 में वर्णित प्रकार से क्षतिपूर्ति 32,000/- रू. प्राप्त करने का अधिकारी है ?
>
> 3. क्या प्रार्थी दुघर्टना के समय सड़क आम पर साईकल चलाना सीख रहा था और अचानक स्वयं की लापरवाही से जीप के आगे आकर दुघर्टनाग्रस्त हुआ है चालक द्वारा दुघर्टना बचाने की कोशिश भी की थी, इस प्रकार प्रार्थी स्वयं की गलती के कारण मुआवजा पाने का अधिकारी नहीं है ?
>
> -विपक्षीगण
>
> 4. क्या यह क्लेम मियाद बाहर है ?
> -विपक्षी सं.2 व 3
>
> 5. अनुतोष ?"

In oral evidence, Man Singh brother of the claimant was examined as PW-1 and the minor claimant Mahesh Singh was also examined as PW-2. On the other hand, the non-applicants examined Malkit Singh, driver of the offending jeep as DW-1 and Ganpat Singh, an alleged occupant of the jeep at the time of accident, as DW-2. The

claimant also produced the documentary evidence relating to the Police Investigation and the injury reports.

After hearing the parties, learned Judge of the Tribunal took issue Nos. 1 and 3 together for consideration and after analysing the statements of the witnesses particularly of the jeep driver, learned Judge formed the opinion that the driver omitted to take necessary care; and the accident causing injuries to the claimant occurred for his negligence. After rejecting the baseless contention about limitation, learned Judge took up quantification of compensation in issue No.2 and with reference to the injuries sustained and the treatment undergone, allowed Rs.10,000/- for one grievous injury, Rs.5,000 towards five simple injuries, Rs.6,200/- for 31 days' hospitalisation, further Rs.2,000/- for bandage till 14.10.1987, Rs.500/- for treatment expenditure, Rs.300/- for loss of studies for three months and Rs.3000/- for pains and sufferings; and in this manner, the Tribunal made an award in the sum of Rs.27,000/- and allowed interest @ 10% per annum from the date of filing of the claim application, i.e. 25.01.1988.

Assailing the award aforesaid, learned Additional Government Advocate Mr. B.L. Bhati has strenuously contended that the Tribunal has seriously erred in awarding compensation in this case though there was no negligence on

the part of the jeep driver and the accident occurred solely for the negligence and fault of the claimant. Mr. Bhati has referred to the stark contradictions in the case set up by the claimant about the direction of motion of the injured and his companion and that of the jeep and submitted with reference to the site inspection report and the statements of the jeep driver that the accident occurred not for any negligence or fault of the driver but the children while learning cycling hit against the jeep for their own negligence though the jeep was proceeding on its correct side and at a moderate speed. Mr. Bhati further assailed quantum of compensation with the submissions that the Tribunal has awarded highly exorbitant amount on the assumed loss of the claimant and in the overall circumstances of the case the award in the sum of Rs.27,000/- remains grossly disproportionate to the alleged injuries and the alleged loss. Mr.Bhati submitted that the amount of Rs.6200/- that has been awarded to the claimant for 31 days' hospitalisation remains entirely unjustified after the compensation had been awarded on other heads. Mr. Bhati further submitted in the alternative that in any case the contributory negligence of the injured is but apparent on the face of the record and, therefore, the award amount deserves to be slashed to the extent of his own negligence that cannot stand less than 50%.

Learned counsel Mr.K.R.Saharan appearing for the respondent No.1 has submitted that the accident occurred only for the negligence of jeep driver and the findings have been recorded by the Tribunal on issue Nos.1 and 2 after thorough appreciation of entire evidence and call for no interference. Learned counsel has further submitted that the award is not excessive and is rather on the lower side and the claimant submitted cross-objections for enhancement that were rejected on 04.03.2005 as time barred and a special appeal against the said order is pending.

Having given a thoughtful consideration to the submissions made by the learned counsel for the parties and having scanned through the entire record, this Court is clearly of opinion that the submission of the appellants regarding negligence on the part of the injured claimant deserves to be rejected; and there appears no reason for considering any enhancement in the compensation awarded by the Tribunal that itself stands on higher side; but at the same time, the award cannot be said to be so excessive as to warrant interference in appeal; and as a net result, the appeal deserves to be dismissed.

So far contribution towards accident is concerned, nothing much turns upon the averments taken in the claim application about the direction of motion of the injured and the

jeep. The claimant has clarified in his statements that the pleadings as taken in the claim application stating that two boys came from market was not correct. However, this discrepancy is no material bearing particularly when the factum of accident is not in dispute and the facts could be noticed and examined with reference to the site inspection report prepared by the police and so also the statements of the jeep driver himself. Learned Judge of the Tribunal has meticulously examined the statements of witnesses and has rightly observed with reference to the admitted case of the jeep driver that if he had spotted the children wobbling on a bicycle from a distance of about 15 feet then it was required of him to have applied brakes.

Having examined the evidence on record, this Court is satisfied that the view taken by the learned Judge of the Tribunal remains a reasonably possible view of the matter. The jeep driver Malkit Singh, DW-1 has stated that he had spotted the two boys on bicycle from a distance of about 15 ft. and has alleged that his jeep was in a speed of about 20 kilometers per hour. He has also alleged that a boy was riding on the seat of the bicycle and other was sitting behind and they were wobbling, therefore, he gathered the idea that they were learning cycling. When this statement of the jeep driver is taken on its face value, it is apparent that the responsibility

towards accident is required to be fastened on him only. If the jeep was in such a lower speed of 20 kilometers per hour only and the boys were spotted on bicycle from a distance of 15 ft., there was ample time and distance to apply the brakes and to prevent accident. The suggestion that he applied the brakes and yet the children hit against the jeep does not fit in the fact situation of the case and the site inspection report Ex. A/4 specifically records that there were no marks of application of brakes. The extent of injuries suffered by the claimant also suggests against the proposition that he hit against a stationary vehicle.

Learned Additional Government Advocate pressed the submissions that the injured claimant was in any case guilty of contributory negligence. This Court is of opinion that in the fact situation of the case of the present nature such suggestion of contribution on the part of a boy of about 10-12 years of age cannot be accepted. A person using a motor vehicle owes the duty to ensure safety of others that they may not get injured by the use of the vehicle and in cases of children in about 10-12 years of age, the duty becomes more onerous. Even if it be assumed that the claimant was wanting in traffic sense and did not take reasonable care requisite of a prudent person, due regard is required to be given to his age and corresponding understanding and the suggestion of

contributory negligence on the part of a boy of not more than 12 years of age cannot be accepted. There appears no reason to take any different view of the matter on issue No.1 and 3 and the findings thereto deserve to be affirmed.

Coming to the question of quantum of compensation, the submission of the learned Additional Government Advocate are of course correct that the award of compensation is definitely on higher side. The injured claimant had suffered fracture of right femur bone and five simple injuries and he remained hospitalised for a month and there is no evidence of any permanent disablement. The award in the sum of Rs.10,000/- for grievous injury, Rs. 5,000/- for simple injuries, Rs.500/- for treatment expenditure and Rs.3000/- for pains and sufferings does not appear unjustified but the other component of compensation particularly of Rs.6200/- for 31 days' hospitalisation and further Rs.2000/- for future loss appear to be definitely excessive. However, the fact remains that nothing has been awarded towards dietary expenditure and in the overall circumstances of the case, providing reasonable amount for the loss of studies and the cost of litigation, this Court is of opinion that the award in the sum of Rs.27,000/- could only be said to be on the higher side but not so excessive as to warrant interference by the Appellate Court. In the award made in the year 1994, the

Tribunal has awarded interest @ 10% per annum from the date of filing of the claim application though, ordinarily at the relevant time the rate of interest could have been awarded at 12% per annum. The Tribunal has awarded the cost of litigation only at Rs.100/- that too remains on the lower side.

In the ultimate analysis, this Court is of opinion that though the award is on the higher side but cannot be said highly excessive and does not call for interference in appeal.

As a result of the discussion aforesaid, this appeal fails and is, therefore, dismissed. No costs.

(DINESH MAHESHWARI), J.

//Mohan//